



Rhode Island Department of Environmental Management
Office of Water Resources

**RESPONSE TO COMMENTS ON THE PROPOSED RULES AND REGULATIONS FOR THE
OPERATIONS AND MAINTENANCE OF WASTEWATER TREATMENT FACILITIES.**

Date of Public Notice: July 25, 2007. Close of Comment Period: August 31, 2007



The following are responses to comments submitted in response to the Department of Environmental Management's public notice of the above-referenced regulations. This document opens with responses to general concerns expressed by two or more commenters. Following that are the specific comments received, and the Department's response, some of which refer to the opening general comments.

Please note that the Department wishes to extend its appreciation to all those who have taken the time to comment on these important regulations.

General Comment 1. As drafted, Rule 5.G, as well as the definitions of Owner and Wastewater Treatment Facility, expand the responsibilities of (and so the burden on) municipalities or other public entities with a RIPDES permit for a wastewater treatment facility.

Response: The revised regulations in fact *lessen* the burden on a RIPDES permit holder. The superseded regulations (written in 1979) define Owner and Wastewater Treatment Facility as:

***“Owner”** shall mean the permittee named on the Federal National Pollution Discharge Elimination System (NPDES) permit issued for the wastewater treatment facility.*

***“Wastewater Treatment Facility”** shall mean a group or assemblage of processes, devices and structures for the treatment or removal of objectionable constituents of wastewater. The term wastewater treatment facility shall include all sewage collection system pumping, filtering and chlorination stations.*

From these definitions, the DEM has since 1979 possessed the authority to consider *any* infrastructure—public or private—to be part of a NPDES (or RIPDES) permitted facility. Such contributing collection systems are typically referred to informally as “satellite systems.” This means that under pre-existing regulatory authority there is the expectation that all wastewater treatment facilities with a RIPDES permit are ultimately and always responsible for the O&M of not just their municipally-owned systems, but also of public and private satellite systems.

In contrast, the proposed regulations assign primary responsibility of satellite municipal collection systems to that municipality itself—not the NPDES holder of the treatment facility into which the satellite system drains. The proposed regulations also assign primary responsibility of private wastewater collection and conveyance systems (again from the NPDES holder) to the actual owner of the private system (by placing them under the opening umbrella clause of Rule 5A). However, the regulations do anticipate that the host municipality of a private system bears some responsibility for remedial action should that privately built wastewater system fail without adequate (or any) response from the actual private owner. This means that while the proposed regulations require that communities track, monitor and regulate proper operation and maintenance of private systems (such as through a registration process that the community may propose as part of their O&M Plan), the draft regulations no longer consider “**all** sewage collection system pumping” infrastructure to be “owned” by the RIPDES holder.

In order to address the many concerns raised in this area, the language of Rule 5 has been amended to better clarify and specify the expectations imposed on wastewater treatment infrastructure owned by municipalities and other public entities, some of which may hold a RIPDES discharge permit. The clarifications enumerate the requirements to track private ownership of wastewater collection infrastructure, as well as emergency notification and general oversight expectations.

On a related note, while no comments were received from satellite communities, the current regulations will place upon these municipalities minimum requirements for maintaining records of, and an operations and maintenance plan for, their wastewater collection infrastructure. This information, however, is considered basic and fundamental to the proper operation and maintenance of wastewater collection infrastructure (which will mitigate sanitary sewer overflows that may impact public health or the environment) and so should already be pre-existing. Lastly, DEM does intend to provide some level of training regarding these newly promulgated regulations.

General Comment 2: *Commenters questioned the necessity of and asked for clarification about the exclusion in Rule 4.I regarding a sewer line with a design flow of less than 10,000 gallons.*

Response: The Department concurs with a number of these comments. As such, the Department has concluded to raise this flow-rate cut-off for gravity sewer lines in the definition of wastewater treatment facility from 10,000 gpd to 30,000 gpd. The rationale for this change is that projects with an average flow of 30,000 gpd or greater are currently required to obtain an Order of Approval from the Office of Water Resources. As part of this review, any pump station associated with such a design flow (or a greater one) is required to submit a draft service agreement. Given this existing practice, the Office of Water Resources can then coordinate with communities regarding the proposed project, and the adequacy of its service agreement. The Department's approval will include the requirement that in the event of any future sale of said system the new owner must likewise maintain a service agreement, and abide by the Operations and Maintenance regulations. (Pump stations with a flow of less than 30,000 gpd, but which are not "low-pressure grinder pumps," will still require oversight by the host community, as the 30,000 gpd cut off is for gravity sewer lines only.) A procedure similar to that above could be in place with the Office of Water Resources' approvals of gravity lines over 30,000 gpd. For such projects, the Department, through its Order of Approval, coordinates with municipal authorities and orders compliance with the Operations and Maintenance regulations. Gravity lines with an average daily flow of less than 30,000 gpd would be exempt from these regulations.

Specific Comments:

Rule 1. Purpose.

Comment 1: *Please clarify what RIDEM would use for the definition of "operated at their maximum level of efficiency" and "remove the maximum amount of objectionable constituents in wastewater"? What would a Wastewater Treatment Facility and/or a RIDEM use as a reference(s) and/or standard(s) to make a determination that a facility is or is not meeting the purpose as indicated in Rule 1? Please provide the legal and/or regulatory requirement to have a Wastewater Treatment Facility meet these purposes as currently stated, which clearly could exceed all RIPDES permit regulatory requirements. Rule 13 clearly states that a person or entity that operates a Wastewater Treatment Facility in violation of the rules and regulations shall be subject to administrative enforcement actions, and/or civil and/or criminal penalties. The Commission would suggest that the language be revised to be more consistent with the language used in the RIPDES permit, General Requirements, section (e) and compliance with the facilities RIPDES permit, including the General Requirements would be deemed sufficient to demonstrate compliance with the intent of Rule 1.*

Response: Pursuant to Rule 14.06 of the RIPDES Regulations (which has been in effect since 1984) "The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective

performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including quality assurance procedures as determined to be appropriate by the Director. This provision requires the filing of an Operation and Maintenance Plan which describes backup or auxiliary facilities or similar systems to assure compliance with permit conditions” The Department uses both permitted pollution limits of any given RIPDES permit in conjunction with an array of specific and temporal data in determining the extent to which a RIPDES holder can meet or reasonably improve upon RIPDES standards as a means of meeting the requirements of the regulations enabling legislations, specifically Chapters 46-12, 42-35, 42-17.1 and 42-17.6 of the Rhode Island General Laws of 1956, as amended.

Comment 2: Following “adequately transport”, “and” should be replaced with “and/or” to include the case for a sewage collection and transport system, which does not provide wastewater treatment). Following “submit”, insert “to RIDEM”.

Response: This replacement of “and” with “and/or” will be accepted as offered, and the draft regulations so amended.

Rule 4. Definitions.

Definition of “Combined Sewer Overflow.”

Comment 1: Are there such structures which that allow a discharge into receiving water which the discharge has received partial treatment (maybe not complete) at a treatment works? “Treatment works” not defined.

Response: This definition is existing regulatory language within the Office of Water Resources Water Quality Regulations; moreover, this definition is not used within the body of the regulations (it is referred to only within the definition of SSO). No changes are therefore necessary as the term “treatment works” meets the required purpose within the definition. As such this comment need not be adopted.

Definition of “NPDES.”

Comment 1. Is there a case where NPDES does not include RIPDES? If not, delete “may” and revise “include” to “includes”.

Response: Yes, EPA has technical authority to override state permitting programs. Also, please note that a NPDES permit is an EPA-issued permit, and as such is not necessarily a permit issued by the Rhode Island Department of Environmental Management. Therefore the currently proposed definition meets the intended purpose, and as such this comment will not be adopted.

Definition of “Operation and Maintenance Plan or Plan.”

Comment 1: *Public file should contain paper document--requests made to RIDEM to access public records should be provided (sic) paper document. (Not everyone uses a computer or may not have computer programs/memory to download these files.) Same comment applies to Rule 5. (G).*

Response: Electronic documentation can be printed by the agency for the convenience of any member of the public seeking said information.

Definition of “Owner.”

Comment 1: *The definition, as revised, added all the entities listed in (ii) of the definition and thus create what could be considered dual “Owners”. There would always be the “permittee” as defined (and this was the extent of the original rule definition) and is now expanded to include others. The permittee and one of the others could be one and the same but not necessarily so. It is clear under existing federal and state law and/or regulations what the permittee’s responsibilities would be but the definition expands this responsibility to others which may or may not be aware of the potential responsibilities of compliance with these regulations. Also the definition does not provide for private ownership and would seem to need to be clarified to include language for private ownership unless it is RIDEM’s intention that there is no private ownership allowed. Current definition makes no indication or provision for private ownership of wastewater collection, pumping and conveyance systems which could be included as Wastewater Treatment Facilities under the Rule 4, (I) definition. Could RIDEM provide a clarification of the definition regarding private property?*

Response: The definition of Owner (note that this is used with a capital “O”) is specifically defined for use in these regulations to identify parties that are required to submit an Operation and Maintenance Plan to the Department [i.e. 1) Public or private RIPDES permit holders for a Wastewater Treatment Facility and 2) public bodies that are responsible for sewer systems] This does not effect actual “ownership rights” or preclude the use within the regulations of the common use of “owner” (with a lower-case “o”). The definition of Owner does not expand existing regulatory oversight of wastewater treatment facilities that are RIPDES permit holders; rather, it relaxes them with regards to their responsibility over satellite collection systems. (See General Comment 1.) The definition intentionally does not include privately owned wastewater infrastructure; this is done to clarify that they are not required to submit an Operation and Maintenance Plan to the Department. The general requirements for privately owned wastewater infrastructure can be found in Rule 1 and the preamble of Rule 5 (now 5.A).

Comment 2: *For which cases is “and/or (ii).....” not “(i) the permittee...”? Why is not the permittee the defined owner who will be responsible for requirements assigned to the owner in this draft amendment?*

Response: Item *ii* is intended to refer to the wastewater collection systems of satellite communities that discharge into wastewater treatment facilities. Such collection systems are not issued permits by the RIPDES program. However, for clarification purposes the word “and” has been removed.

Comment 3: *How does this definition address private entities created for the sole purpose of operating and maintaining and generally controlling a wastewater treatment facility?*

Response: The definition of Owner is specific to RIPDES/NPDES permit holders or other municipal or governmental entities that own and operate wastewater treatment collection infrastructure. Private entities with a RIPDES/NPDES permit would be included within this definition. Please note that the definition of Owner (used with a capital “o”) is specifically defined for use in these regulations. This does not preclude the use within the regulations of the common use of “owner” (with a lower-case “o”).

Definition of “Sanitary Sewer Overflow.”

Comment 1. *Replace “allowable” with “RIDEM (or USEPA if the case) permitted”. Insert “RIDEM” (or USEPA if the case) before “approved”.*

Response: This definition has been amended for clarification.

Definition of “Wastewater Treatment Facility.”

Comment 1: *This definition clearly includes “privately owned wastewater collection, pumping and conveyance systems interconnected with and emptying into a host Wastewater collection system” with some exclusions. Is it the intention of RIDEM to have only “Owners” as defined in Rule 4 (F) have responsibility, liability and oversight over private property that includes wastewater collection, pumping and conveyance systems interconnected with and emptying into a host Wastewater collection system? If the Owner of the Wastewater Treatment Facility which is the host wastewater collection system does not have legal authority to enforce the regulation over privately owned wastewater collection, pumping and conveyance systems located on privately owned property, does the current RIDEM authority convey to or provide for the legal authority that would be required for the Owner of the host Wastewater Treatment Facility to effectuate these Rules and Regulations? If not, is it the intention of RIDEM to have the Owner seek the legal authority over private property as may be required to effectuate these Rules and Regulations? Also, is it the intention of the definition to specifically include as privately owned “the wastewater collection, pumping and conveyance systems” and specifically excludes from privately owned “storage, physical, chemical and/or biological treatment, filtering and disinfection systems”?*

Response: See General Comment 1. In addition the final approved Operations and Maintenance Plan must denote the form in which statewide legal authority (provided in RIGL §45-6-1 and §45-6-2.3) will be used by the community to protect its own wastewater infrastructure, public health and assets by monitoring, etc., privately owned wastewater infrastructure. As drafted, and as revised due to public comment, the regulations provide ample flexibility for communities to submit and seek approval of any means by which they can categorize and communicate with those private entities that have sought and been granted approval for a sewer tie in by the host community. The commenter is correct that privately owned wastewater collections systems should also include the term “storage” for consistency. The addition of “physical, chemical and/or biological treatment, filtering and disinfection systems,” however, shall not be included therein as this addition would by necessity include industrial pretreatment systems, which fall outside the purpose of these regulations.

Comment 2: *As to the exclusions as indicated could further clarification be provided for;*

- any privately owned plumbing: *If plumbing is defined, by plumbing code, as only extending a certain number of feet (i.e. 5 ft.) from a building(s) foundation and the buildings sewer connection extends from that point to the private property line which then connects to the public sewer within the public right of way, would this sewer pipe on private property be included under the definition in Rule 4 (I)?*

Response: Such piping (if designed less than the 30,000 gpd exclusion in the definition of Wastewater Treatment Facility) would be part of the excluded infrastructure from the definition of a Wastewater Treatment Facility.

- low-pressure grinder pumps: *Is this to be interrupted as the pump only and not to include any sewer piping interconnecting the grinder pump to the building(s) and/or the public sewer?*

Response: Unless the total flow of the plumbing were greater than the revised value of 30,000 gallons per day, any such piping is intended to be excluded from the definition of Wastewater Treatment Facility

- gravity sewer lines with a design capacity of less than 10,000 gallons per day: *What standard is to be used by RIDEM for the definition of design capacity in this circumstance? Would using the RIDEM policy for flow estimation be acceptable or is it a strict engineering calculation based on pipe size and slope?*

Response: Yes, the Department would indeed use the Flow Estimation Policy for Design of Sanitary Sewers. For clarification this statement has been added to the definition. For additional information, see General Comment 2.

Comment 3: *The Town of Narragansett would recommend that separate definitions be incorporated for publicly and privately owned wastewater treatment facilities. They are separate and distinct by their very nature, in terms of how they were financed (i.e. public funds vs. private developer funding) and how they may operate.*

Response: See General Comment 1.

Comment 4: *If the proposed regulations are going to exempt “gravity sewer lines with a design capacity of less than 10,000 gallons per day”, then should systems with pump stations that fall beneath this threshold be exempted as well? For example, under the proposal as written, you could have a private subdivision with 9,999 gallons per day of flow excluded from these regulations, but a small professional building with a pump station and flows of 500 gallons per day (basically a few employee bathrooms) subject to the regulations. Perhaps a compromise position would be to exempt the small pump station systems unless they have a commercial (i.e. restaurant) or industrial (manufacturing, or other “wet” industry) component.*

Response: See General Comment 2. Please note that any pumping system more complex than the (currently drafted) exempted low-volume pumps (such as grinder pumps) requires some

level of operations and maintenance oversight for the protection of public health and the environment. As such this comment will not be adopted.

Comment 5: *According to the proposed July 2007 O&M WTF regulations changes, “Wastewater” includes any wastes, which are intended to enter a Wastewater Treatment Facility for collection, conveyance, treatment and discharge in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Furthermore, the current Rules and Regulations for Wastewater Treatment Facility Operators (WTF Operators regulations), dated September 2002, defines wastewater as a combination of liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and/or storm-water that may be present. “Wastewater Treatment Facility” is further defined in the proposed July 2007 O&M WTF regulations as a group or assemblage process, devices, structures for the conveyance, treatment or removal of objectionable constituents of wastewater. The wastewater treatment facility includes wastewater collection system piping, pumping, storage, physical, chemical and/or biological treatment, filtering and disinfection systems.*

Based on the above referenced current and proposed definitions, it appears that any wastewater treatment system(s) which were or are proposed to be installed as part of site remediation activities, and are used to recover, convey, treat and/or remove contaminants present in surface water, storm-water and groundwater, prior to discharge to a public or private owned sanitary sewer system(s) and/or to a surface water and/or groundwater under a NPDES permit, may be subject to the proposed regulations changes.

However, based on our conversation during the August 15, 2007 workshop held at RIDEM, it is Groundwater Environmental Services Inc. (GES)’s understanding that the intent of the proposed regulations was not to apply to wastewater treatment system(s) installed and operated as part of site remediation activities, which are regulated under the RIDEM Waste Management Division and/or the RIDEM Water Resources Division under a Rhode Island Pollutant Discharge Elimination System (RIPDES) permit and/or Public Owned Treatment Work (POTW).

Therefore, based of this information, GES recommends that the proposed regulations be amended and include a third exemption (iii) in the proposed Wastewater Treatment Facility definition section (Rule 4). The proposed exemption would specify that a wastewater treatment system(s) installed and operated as part of site remediation activities regulated under the RIDEM Waste Management Division and/or the RIDEM Water Resources Division under a Rhode Island Pollutant Discharge Elimination System (RIPDES) permit and/or Public Owned Treatment Work (POTW), shall not be considered a Wastewater Treatment Facility regulated under the subject regulation and shall not be required to meet the applicable Rules 1 through 16.

Response: In informal discussions with representatives of this commenter, Department representatives never concluded definitively that the new regulations would not apply to groundwater remediation systems. Rather that the answer to this question would require review and consideration within the Department should such a suggestion be formally submitted as public comment. Having reviewed this comment and examined the matter, the Department finds no justification, statutorily or otherwise, to exempt groundwater remediation systems with a RIPDES permit from general proper operation and maintenance requirements. As such this comment will not be adopted. However, given the size and likely comparative simplicity of such remediation systems, many required components of an Operations and Maintenance Plan

would not be applicable. Specific elements of a plan would be determined on a case-by-case basis.

Comment 5: *Should “and/or” be inserted after “conveyance”? Is there conflict between Rule 4. (F) and (I) in the case where a WWTF is privately owned/operated and does not empty into host Wastewater collection system? Is this case not under the definition of “Wastewater Treatment Facility” as the amendment now reads? (These privately owned/operated WWTFs should be included under “Wastewater Treatment Facility” definition. Last sentence, “gravity sewer lines” should be replaced with “sewage collection system” to avoid “segmenting” system (by person or entity) so will not qualify under the definition.*

Response: The current use of “or” in concluding a series provides the grammatically needed flexibility to include any individual element of the series, or any combination thereof. The remainder of the definition meets the intent of the regulations, with no conflict between it and other definitions. As such this comment will not be adopted.

Comment 6: *Since the construction, operation and maintenance of “publicly- owned” versus “privately- owned” wastewater collection and pumping infrastructure is different by definition and by original infrastructure funding, I believe it is important for the RI Department of Environmental Management (RIDEM) to include a separate definition for each type of wastewater infrastructure ownership.*

Response: The regulations as currently drafted provide the minimum necessary definitions. As such this comment will not be adopted.

Comment 7: *The proposed regulations, as proposed, exempt “gravity sewer lines with a design capacity of less than 10,000 gallons per day”. Since the method of wastewater conveyance should not be moot, I believe that wastewater conveyance via a pump station and force main should also be exempt from the regulations if the design capacity is 10,000 gallons or less.*

Response: See General Comment 2. In addition, any pumping system more complex than the (currently drafted) exempt low-volume pumps (such as grinder pumps) requires some level of operations and maintenance oversight for the protection of public health and the environment. As such this comment will not be adopted.

Comment 8: *What is the reasoning and/or justification for defining wastewater treatment facility to include privately-owned systems with a design capacity of 10,000 gallons per day or greater. What is the scientific, engineering or environmental basis for this definition? Does this include any pumping station with capacity of greater than 7 gallons per minute? Would this definition include a private system of multiple “grinder” pumps such as a condominium complex which has individual grinder pumps for each unit which discharge to a system which eventually discharges to a public collection system?*

Response: See General Comment 2, in which the exclusionary language in the definition for a Wastewater Treatment Facility has been increased to 30,000 gpd. This value is consistent with, and derived from, the Department’s September 22, 1995 policy change for Orders of Approvals for wastewater conveyance facilities.

Comment 9: *The change in definition of wastewater treatment facility would appear to significantly increase the publicly-owned treatment facility's liability and exposure to civil litigation in the event of an overflow in a private development. In the past, only the owner of the system would be held liable for damages (environmental or physical) due to a failure of a private system. This change would seem to open the possibility of suing municipalities for damages or encouraging third party law suits against the publicly-owned treatment facility. Has the Department of Environmental Management (DEM) investigated how this rule change will affect the associated liability of operating a publicly-owned treatment works? If so, what were the conclusions?*

Response: See General Comment 1.

Comment 10: *Since most of these private systems require an Order of Approval from DEM, will DEM provide that information to the Owner of the wastewater treatment facility along with any related records for the past years?*

Response: Yes, the Department could provide such electronic information, but only from 1991 to the present. This Order of Approval information includes general location information, as well as the initial owner/applicant. Detailed location information is available in the individual Order of Approval paper files.

Rule 5.

Comment 1: *There are numerous references to "Owner" and "Wastewater Treatment Facilities" in Rule 5, as well as throughout the amended regulation, and applying the definitions for these terms, as is required in Rule 4, the overall responsibilities, duties and potential liabilities for an "Owner" with regards to any facilities under private ownership is unclear. Rule 5 (G) 14 is the only section in the regulation specifically addressing privately owned Wastewater Treatment Facilities and would seem to be in conflict with Rule 4 (I) which specifically defines a "Wastewater Treatment Facility" as including "privately owned wastewater collection, pumping and conveyance systems interconnected with and emptying into a host Wastewater collection system". Does Rule 5 (G) (14) only apply to the stated exclusions to the Rule 4 (I) definition of a Wastewater Treatment Facility? Could the rule language be revised and further clarified so there can be no confusion as to what responsibilities and duties are required of Owner(s) of a host Wastewater Treatment Facility and the Owner(s) of a wastewater collection, pumping and conveyance system on private property and under private ownership?*

Response: See General Comment 1.

Comment 2: *As this section (Rule 5.G.14) is written it requires "Assurances" that those private wastewater treatment facilities have the ability and procedures to be properly maintained and operated at all times. Is it the intention of the regulation for an owner of a host Wastewater Treatment Facility to require a privately owned Wastewater Treatment Facility to provide documentation of the procedures to assure proper maintenance and operation including all pertinent item listeds (sic) under Rule 5 (G) (1 – 13)? Also how does this revised regulation*

apply to existing privately owned Wastewater Treatment Facilities, which up to this time, were not covered by this regulation (i.e. does it apply retroactively)?

Response: It is the intention of the Department to require some level of oversight by Owners (as defined in the regulations, specifically Rule 5.A) of applicable, privately owned wastewater infrastructure. Per the response to General Comment 1, for RIPDES holders such an expectation is a lessening of potential burdens from pre-existing regulatory language. This requirement will be retroactive.

Comment 3: *Could RIDEM define and clarify “all legal authority necessary for an Owner to ensure system capacity by regulating the volume of flow entering the Wastewater Treatment Facility, including but not limited to residential and commercial customers, neighboring communities and industrial users”? The Commission Rules and Regulations do not specifically address regulating flow from the different users as listed. Is it RIDEM’s intent that specific flow limits be imposed under some type of legally binding agreement for any current and/or potential user as listed?*

Response: Flow limitations should already be being imposed on all external wastewater sources to protect the physical property of host wastewater infrastructure assets, as well as to prevent illegal overflows of raw or partially treated sewage. The Department believes that such legal authority is pre-existing within municipalities. However, based on comment the Department has clarified the regulatory language to indicate that a schedule for compliance with those portions of the regulations dealing specifically with oversight of private ownership can be included as part of a proposed plan. This clarification is made in the newly drafted Rule 5.H.19.

Comment 4: *This section needs to be better defined as to what responsibility a publicly owned system is expected to have over a privately owned system that contributes flow to it. The term “assurances” is both vague and subjective when used in this context – what will RIDEM look for in terms of “assurances” when evaluating a public WWTF that receives flow from a private WWTF? For example, our Code of Ordinances stipulates that all sewer users (without regard for flow amount) have to comply with our discharge standards, pretreatment, etc. in order to connect and remain connected to the municipal system. However, we do have a number of privately owned and operated systems (including pump stations) throughout the Town. How does the proposed term “assurances” relate to our liability or responsibility should a pump fail at one of those stations and an overflow or spill occur? We do not operate or exercise operational control over private facilities, nor do we have the personnel or financial resources to do so. As such, we cannot be held liable should an overflow occur under the example cited above. As a possible suggestion, would the creation of a local licensing system (i.e. where the Town would issue a reviewable and renewable license to a private WWTF to operate and maintain same in accordance with all applicable regulations) satisfy the term “assurances”? If so, the proposed regulations should include guidance as to what minimum standards are to be met.*

Response: See General Comment 1. Moreover the proposed licensure program discussed in this comment may likely meet the intent of the draft regulations.

Comment 5: *While the proposed changes certainly clarify the intent of the regulations, they also add a significant burden to the regulated community.*

Although an Operations and Maintenance Plan is not a new requirement, several of the elements listed in Rule 5(G) are new. Furthermore, the time requirement to submit a revised Operations and Maintenance Plan containing the new elements is taxing. As you are well aware, communities are encumbered with financial demands that strain available resources. Requiring compliance with the new elements in Rule 5(G) within a one to two year time frame will be challenging at best.

As you are aware, the Town of Smithfield is currently complying with an EPA administrative order to address SSOs. The AO requires that the Town identify deficiencies in the operation and maintenance of its collection system, and then develop a corrective action plan to remedy the deficiencies. The elements contained in Rule 5(G) are the same as those required by the AO. The Town is in the process of developing the corrective action plan, including a schedule that will be reviewed by EPA. The timeframes for addressing the deficiencies have not been determined at this time. However, if RIDEM's amendments to the regulations are adopted with the one to two year compliance timeframe, the Town will have no discretion as to the schedule for the corrective action plan. As such, the Town requests that RIDEM amend the time requirement in these proposed amendments to take into consideration the manpower and financial resources required to comply as well as the requirements of the EPA administrative order.

Response: See General Comment 1. Also, please note that Rule 5(D) and 5(E) provide measures for a time extension, and that any community's proposed Operations and Maintenance Plan may include a schedule for implementation of Plan requirements which deal with the oversight of private collection systems.

Comment 6: *The proposed regulations state that "Proper operation and maintenance may include.... effective management, adequate operator staffing and training..." The words "adequate staffing and training" is subject to interpretation. Therefore, GES recommends that the proposed regulations be amended as follows to "...adequate operator staffing in accordance with Rule 8 of the subject regulation and adequate training as defined in the site specific RIDEM approved Wastewater Treatment Facility Operation and Maintenance Plan..."*

Response: The Department will maintain the language as drafted so that it may appropriately interpret and respond to individual compliance issues as necessary to protect the public health and the natural resources of the State of Rhode Island.

Comment 7 (Written form): *The Narragansett Bay Commission would like to commend the RIDEM for proposing amendments to the Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities. Upon reviewing the proposed regulations the NBC supports the proposed amendments with the exception of Rule 5 (G) (14).*

Rule 5 (G) (14) would require the Owner's of Wastewater Treatment Facilities (POTWs) to obtain assurances from privately owned and connected wastewater facilities, such as privately owned pumping stations, regarding their ability and procedures to properly maintain and operate their facilities at all times. Although the NBC recognizes the importance that privately owned

facilities be properly operated and maintained at all times, the regulatory oversight of these facilities should lie with the RIDEM and not with the publicly owned wastewater treatment facility operator.

The NBC recommends that Rule 5 (G) (14) be removed as a required element of the WWTF Operation and Maintenance Plan and we hereby recommend development of a separate regulatory section detailing requirements for Privately Owned and Operated Facilities. The NBC would support an amendment that requires privately owned facilities to receive an Order of Approval from the DEM to construct and operate such facilities. The amendment should require the submission of all operating and maintenance contracts and procedures to the DEM for approval and regulatory oversight. The amendment should also require that approved documents be submitted to the local POTW for informational purposes. The amendment should also state that emergency notifications of privately owned facility system failures, including those resulting in sanitary sewer overflows, should be immediately directed to the DEM and the contracted O & M entity if applicable.

As noted above, the NBC respectfully request that Rule 5 (G) (14) in the proposed amendments be eliminated as an element of the WWTF Operation and Maintenance Plan requirements. However it is important to note that Rule 5 (G) (14) as written is not clear with regard to whether the POTWs must obtain assurances from “all” privately owned facilities within the service area, or only from those “directly connected” to facilities owned by the POTW. Should the RIDEM retain Rule 5 (G) (14) in the proposed amendments as an element of the WWTF Operation and Maintenance Plan, we request clarification in the amendment regarding this matter.

Comment 7 (Oral form): *The NBC would like to commend DEM for updating the regulations and support the proposed amendments with the exception of Rule 5(G) (14).*

We recommended the removal of this amendment which requires that O&M assurances be obtained by the POTW from privately owned facilities and that they be documented in the POTW's Operations and Maintenance Plan. In many cases POTW regulations do not provide the authority to regulate, oversee or enforce violations against such facilities, especially the authority to enforce cases of sanitary sewer overflows.

We recommended a separate amendment be established that specifies DEM will regulate and oversee all privately owned facilities, with:

- Requirements to obtain an Order of Approval to construct and operate all such privately owned facilities.*
- Submission of plans, O&M contracts and procedures for DEM review and approval.*
- Submission of copies of DEM approved documents to the local POTWs for informational purposes.*
- Immediate notification to DEM and any contracted O&M entity for all system failures.*

Rule 5 (G) (14) as written is not clear. If the rule is to remain, the NBC request that the DEM clarify whether it applies to “all” privately owned facilities or only those “directly connected” to the POTW's facilities.

Response: See General Comment 1. In addition, the Department has amended the draft regulations to include dual response requirements for private owners to both the host community and the Department of Environmental Management. As clarification, the NBC would

not be defined or considered an Owner of those sewer systems so owned by a client municipality—otherwise known as a “satellite system.” As such, any private collection infrastructure tied into such a satellite system would be the concern of the host owner, not the Bay Commission.

Comment 8: *Continue first sentence (after “possible”), “and in compliance with issued RIPDES (note: NPDES, if more appropriate) and other applicable local, state and federal permits”. Add before “facility design”—RIDEM approved facility plans (note: and amendments to master plans). Last sentence, “compliance”—with what? Add RIDEM requirements for when required to submit updated Plan for RIDEM approval (to include the event when collection system is expanded, etc.—see Rule 12. Add requirement for public hearings and public comment of draft Plan before it is submitted to RIDEM for approval.*

Response: The current definition provides the adequate flexibility for the Department’s interpretation as needed to best protect public health and the environment. Furthermore, the Department considers a public-notice requirement an overly burdensome imposition on municipalities, although nothing in the regulations precludes a municipality from doing so. Also, Rule 12 currently provides authority to the Department, and lists procedures thereof, to require revisions to a plan, if and as needed.

Comment 9: *The term “assurance” is subjective and open to different interpretations by different regulators and/ or individuals. Further, in order for a municipality to hold the owner of privately owned wastewater treatment facilities “responsible” said municipality must have the legal authority to do so. As such, has RIDEM secured State-wide enabling legislation for municipalities to do so, or will RIDEM under it’s (sic) authority and jurisdiction hold owners of privately owned wastewater treatment facilities responsible?*

Response: See General Comment 1. Also, please note that based on this and other comments, Rule 5 has been expanded for clarification purposes. With regards to the inquiry on a need for statewide enabling legislation, the DEM believes that municipalities currently have legal authority to regulate privately owned wastewater infrastructure, per RIGL §45-6-1 and §45-6-2.3.

Comment 10: *Does this rule require an Owner to engage the services of a Registered Professional Engineer for minor changes to an O & M plan like, for example, a new organizational chart?*

Response: No. Minor revisions, such as a staffing plan, would not require the oversight of a professional engineer. Such use of a professionally licensed engineer is intended only for larger scale submissions, which require the practice of engineering to develop.

Comment 11: *Is this requirement retroactive? The requirement is clearly new and we believe the scope of it, as currently worded, would be very costly to municipalities and other wastewater treatment facility operators. Has a financial impact analysis been conducted on the proposed changes to the regulations and, if so what were the findings? Are municipalities and other owners expected to bear the full financial responsibility for this new mandate?*

The new wording would require many municipalities – this one included – to update sewer, planning and building ordinances to ensure we have the ability to comply with this new regulation. In addition, it will require wastewater treatment facility owners to obtain the legal authority to enter private property in cases of emergencies and address related issues of liability. As a result, we fully expect issues in trying to enforce these new requirements on previously-approved facilities. If the State wants to begin regulating private entities, it should do so directly or allow for grandfathering of facilities installed under previous rules and regulations.

It is our understanding that the Owners have up to one year to submit revisions to their O & M plans that address these changes in the regulations. Because of the financial and administrative impacts of these proposed new regulations on the Owners, it would take at least one, if not two, budget cycles to ensure adequate staffing and resources and conduct analyses of the impact on the sewer use rates and possible charges to private entities to recoup some of the costs of implementing these regulations. In addition to grandfathering facilities that are currently operating, has DEM considered delayed or staged implementation of at least the particularly onerous requirements being proposed under Rule 5? Will financial and/or technical assistance be available to help Owners in complying with the new requirements?

Response: Please see General Comment 1. In addition, DEM has complied with the requirements of Section 42-35-3.3 of the Rhode Island General Laws. As a result the DEM was not required to undertake a regulatory flexibility analysis by the Governor's Office or the Economic Development Corporation. Also, pursuant to the requirements of Section 22-12-1.1 of the Rhode Island General Laws, a copy of the proposed amendments was provided to the State Budget Officer. A "Fiscal Note for Administrative Rule Change" was completed, and it was determined that the proposed amendments would have no state fiscal impact. Moreover, the regulations do provide provisions for submittal extension. More importantly, it was the Department's expectation that Plans would be submitted and approved with implementation schedules by which communities propose the necessity of (and justification for) reasonable timeframes necessary for meeting the requirements of the regulations. For clarification purposes, the Department has added language specifically stating the need to submit such a schedule as part of the proposed plan.

Rule 6.

Comment 1: *Although a minor issue, Rule 6 (B) does not provide for an option to directly approve the Plan. Could further clarification of the Rule language to add a direct approval option be considered?*

Response: Rule 6.B.2 provides the authority to directly approve the submitted Plan, however the commenter is correct in that the language as proposed assumes that there will be "stipulations" added as part of the DEM's approval. Since this may not be the case, the Department will revise the draft regulations to add the phrase "if necessary" within Rule 6.B.2.

Rule 8.

Comment 1: *The proposed regulations state that “all Wastewater Treatment Facilities must be operated and maintained by properly certified personnel in accordance with the Rhode Island Board of Certification of Operators of Wastewater Treatment Facilities’ Rules and Regulations for Wastewater Treatment Facility Operators “. Based on our conversation during the August 15, 2007 workshop, similar to Rule 4, it is GES’ understanding that this requirement does not apply to wastewater treatment system(s) used as part of site remediation activities. Therefore, assuming that GES’ proposed exemption in Rule 4 will be added to the final regulation, the staffing requirement will not be applicable to system(s) used as part of remedial activities, and no additional changes to the proposed regulations is recommended.*

Response: The Rules and Regulations of Operators of Wastewater Treatment Facilities do not have jurisdiction over referenced groundwater remediation systems, and as such Rule 8 would not apply to said facilities. To clarify this, the Department will revise the language of Rule 8 to include specific applicability of the operator certification regulations.

Rule 9:

Comment 1: *How is “objectionable odor” defined and how can this be measured and qualified? How does DEM propose to enforce this rule in a fair and equitable manner?*

Response: Rule 9 is not new regulatory language; it is the exact language currently in regulations within the Office of Air Resources. According to the Office of Air Resources, when the Department conducts an odor evaluation, areas to be evaluated include: upwind of the alleged source; at or near complainant's locations; other accessible locations in the vicinity of the alleged source; and downwind of the alleged source. This evaluation helps to identify the exact source of the odor. In determining as to whether an odor is objectionable, the investigator must take into account all of the following criteria: the nature — that is, the odor quality, description, unpleasantness/repulsiveness, as well as any physical symptoms experienced (nausea, eye irritation, headache, nose/throat irritation, etc.); the concentration — that is, the strength, intensity, or potency of the odor; the location — that is, a determination if the odor is beyond the property line of the source or if anyone is affected; the duration — that is, the persistence/length of time that the odor occurs; and the source — that is, a determination if it is an industrial or commercial source vs. residential, farm, or mobile source. Odor evaluations must be objective and under no circumstances be subjective. These are the general guidelines under which air-pollution inspectors execute an odor inspection.

Rule 11.

Comment 1: *SCADA/electronic monitoring systems should be required to prove a sufficient degree of electronic security, to prevent unfriendly access to the system*

Response: The Department concurs with this concern, and has amended language regarding wastewater treatment facility security to include electronic monitoring systems. See the newly renumbered Rule 5.H.6.

Rule 12.

Comment 1: *Using the specific Plan requirements as listed in Rule 5 (G) (1 – 15) is it RIDEM's intention that any modification to any item and/or procedures will require submission, review and approval of the Director? Since the revised regulation contains more specific Plan requirements than the general requirements in the current regulation, revisions and resubmission for RIDEM approval may well be reoccurring event. [...]*

Under this Plan requirement (Rule 5 (G)(1)) and the requirements of Rule 12 would any extension and/or addition to the collection system be considered a Plan revision? If so how would this be handled since the actual maps are not required to be submitted but shall be available for review by the director?

Response: Under the revised regulations, per General Comment 2, the Department would be aware of and approve any new infrastructure over 30,000 gpd. For projects of lesser design flows, the Department would assume that municipalities would update their records as needed whenever any addition or alteration to its wastewater collection infrastructure took place. The department would not need to approve such projects (that is, those less conveying an average flow of less than 30,000gpd), nor would it necessarily consider such an alteration to municipal records a modification of the overall Operations and Maintenance Plan. The Department will assume, however, that such municipally owned records will be maintained appropriately for inspection and use by the Department as needed.

Comment 2: *Define “substantial change or alteration”.... Insert ?% increase in capacity, reach 80% (or other appropriate %) capacity. Add requirement for public hearings and public comment of draft Plan before it is submitted to RIDEM for approval.*

Response: The Department will maintain the language, as drafted, so that it may appropriately hold the necessarily discretion and flexibility in this matter to protect the public health and the natural resources of the State of Rhode Island.

Other Comments:

Comment 1: *RIDEM is imposing requirements/responsibilities onto municipalities and/or owners of WWTF to “police” private sewage collection systems, including pump stations. RIDEM is doing so without providing funding to municipalities and/or owners—these amendments add financial burden to the municipalities and taxpayers. (In disagreement with RIDEM rational that municipalities benefit from private developments—tax revenue collected from these developments are used to provide municipal services to these developments.) RIDEM has not provided ordinance language, so there may be many versions of local ordinances (which may need to be legally tested). Suggest in lieu of passing responsibility onto the municipalities, state law be adopted for the registration and operation/maintenance of private facilities, and RIDEM enforce. (According to the RIDEM, there are 120 known private pump stations, should be a manageable number for RIDEM to regulate.)*

Response: See General Comment 1.

Comment 2: *The regulations, as drafted, require both municipal and private owners of wastewater treatment facilities to submit an Operations and Maintenance Plan. Although the existing regulations currently require an O&M Plan, the draft regulations will require an exhaustive plan to be prepared at a significant expense to the municipality. Has RIDEM prepared a Fiscal Note in accordance with the Administration Procedures Act specific to South Kingstown with respect to the expense the Town will incur if the regulations are adopted as proposed?*

Response: The regulations as drafted do not require private entities to develop an Operations and Maintenance Plan. Revisions to existing municipal plans need not necessarily be “exhaustive” or costly; much of the information specified exists within current O&M manuals, and additional information can be added as amendments. Lastly, in complying with the requirements of Section 42-35-3.3 of the Rhode Island General Laws, DEM was not required to undertake a regulatory flexibility analysis by the Governor’s Office or the Economic Development Corporation. Also, pursuant to the requirements of Section 22-12-1.1 of the Rhode Island General Laws, a copy of the proposed amendments was provided to the State Budget Officer. A “Fiscal Note for Administrative Rule Change” was completed, and it was determined that the proposed amendments would have no state fiscal impact.

Comment 3: *The U.S. Environmental Protection Agency appreciates this opportunity to provide comments on the Rhode Island Department of Environmental Management’s proposed revisions to its Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities. EPA strongly supports the State’s effort to update and revise its operations and management regulations. As you are aware, eliminating discharges of untreated wastewater is an EPA national priority.*

EPA applauds the State’s recognition that maintaining collection systems is an integral part of the sound management of the State’s wastewater treatment facilities. As a component of this, EPA supports the State effort to clarify municipalities’ and wastewater utilities’ responsibility regarding privately owned wastewater collection, pumping, and conveyance systems that discharge to host wastewater collection systems.

Response: None.